

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERITAGE REALTY MANAGEMENT, INC.,	)	CASE NO. CA 04-333 ERIE
	)	
	)	JUDGE SEAN MCLAUGHLIN
Plaintiff	)	
	)	
vs.	)	
	)	ELECTRONICALLY FILED
JOHN ALLIN d/b/a ALLIN COMPANIES, and SNOW MANAGEMENT GROUP,	)	PLEADING
	)	
Defendant		

**AMENDED COMPLAINT**

AND NOW, comes the plaintiff, Heritage Realty Management, Inc., by and through its counsel, Knox McLaughlin Gornall & Sennett, P.C., and files the following as its Amended Complaint:

**PARTIES**

1. Heritage Realty Management, Inc., ("Heritage") is a Maryland corporation with its principal office located at 131 Dartmouth Street, Boston, Massachusetts 02116, and is a citizen of the Commonwealth of Massachusetts.

2. John Allin is an individual doing business as Allin Companies and Snow Management Group ("Allin"), who resides at 2319 South Shore Drive, Erie, Pennsylvania 16505, and is a citizen of the Commonwealth of Pennsylvania.

**JURISDICTION**

3. Jurisdiction of this matter is based on diversity of citizenship between the parties and an amount in controversy in excess of \$75,000.00 exclusive of interest and costs of suit, pursuant to 28 U.S.C. § 1332.

**FACTS**

4. On October 12, 2004, Heritage and Allin entered into a contract pursuant to which Allin was to provide snow and ice removal services at Heritage's properties. (the "Contract") A copy of the Contract, without exhibits, is attached hereto as Exhibit "A" and incorporated herein by reference.

5. Allin held itself out as "an experienced and professional organization that specializes in the management and supervision of snow and ice removal services for commercial properties provided under subcontracts with reputable commercial snow removal contractors." (Contract, Description of Services)

6. On October 15, 2004, in anticipation of work that Allin was to perform under the Contract, and pursuant to the Contract's terms, Heritage made an initial payment to Allin of \$340,482.90.

7. Pursuant to the terms of the Contract, Heritage had the right "to terminate [the Contract] by giving [Allin] ten (10) days written notice in the following events: . . . (c) without any cause whatsoever, provided, in all such events, Heritage shall pay [Allin] for all work or services performed and equipment and materials supplied to the date of termination." (Contract, ¶ 17).

8. On November 12, 2004, Hertiage gave Allin written notice of its termination of the Contract pursuant to its termination provision.

9. As of November 12, 2004, Allin had not performed any work or services or supplied any equipment or materials under the Contract.

10. Within its November 12, 2004 letter, Heritage also demanded the return of the \$340,482.90 initial payment.

11. Allin refused and has continued to refuse to return this payment.

**COUNT I**  
**Breach of Contract**

12. Heritage incorporates paragraphs 1 through 11 of this Amended Complaint.

13. Pursuant to paragraph 17 of the Contract, Heritage had the right to terminate the Contract for any reason.

14. In the event of such a termination, Allin was only entitled to payment for "work or services performed and equipment and materials supplied to the date of termination."

15. On November 12, 2004, Heritage gave Allin notice of its termination of the Contract.

16. As of November 12, 2004, Allin had not performed any work or services and had not supplied any equipment or materials.

17. Therefore, Allin is not entitled to any payment and must return Heritage's initial payment of \$340,482.90.

18. Allin's refusal to return this payment is a breach of its obligations under the Contract.

WHEREFORE, Heritage Realty Management, Inc., respectfully requests that this Court enter judgment in its favor and against John Allin d/b/a Allin Companies and Snow Management Group in the amount of \$340,482.90, plus interest and costs of suit.

Respectfully submitted,

KNOX McLAUGHLIN GORNALL &  
SENNETT, P.C.

BY: /s/ Richard A. Lanzillo, Esq.

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Heritage Realty Management, Inc.

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**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the Amended Complaint was electronically served this 12<sup>th</sup> day of September, 2005, to all counsel of record and unrepresented parties in the above-captioned matter.

BY: /s/ Richard A. Lanzillo, Esq.